NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION

May 16, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 CC Docket No. 96-98

Dear Mr. Caton:

Enclosed please find an original and sixteen copies, two of which have been designated "Extra Public Copy", of the Comments of the Public Staff of the North Carolina Utilities Commission for filing in the above-referenced proceeding.

Sincerely,

Antoinette R. Wike
Chief Counsel

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Enclosure

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)))	CC Docket No. 96-98

COMMENTS OF THE PUBLIC STAFF OF THE NORTH CAROLINA UTILITIES COMMISSION

The Public Staff of the North Carolina Utilities Commission ("the North Carolina Public Staff") submits these comments on the issues identified in the Notice of Proposed Rulemaking ("NPRM"), FCC 96-182, released on April 19, 1996.

I. Introduction.

A. The Telecommunications Act of 1996.

The Commission correctly noted in its NPRM that "[i]n enacting the Telecommunications Act of 1996 ('1996 Act'), Congress sought to establish 'a pro-competitive, de-regulatory, national policy framework' for the United States telecommunications industry."[1] That the purpose of the Act is to facilitate the introduction of local exchange and exchange access competition, while lessening and, indeed, removing the regulatory barriers to competitive entry and the regulatory burdens upon incumbent LECs is patently clear from a reading of the Act and the Act's legislative history. Moreover, under our federal system of government, it is equally clear that Congress envisioned a major role for the states in implementing the provisions of the Act, in

[1] NPRM, ¶ 1.

introducing competition to all segments of the telecommunications industry, and, in continuing to provide for the availability of "[q]uality service . . . at just, reasonable, and affordable rates."[2]

B. North Carolina Law.

Chapter 62 of the North Carolina General Statutes ("N.C.G.S.") sets forth a general and comprehensive plan for the regulation of public utilities in North Carolina, and since enactment of the Public Utilities Act of 1963, the North Carolina Utilities Commission has exercised regulatory jurisdiction over a broad range of public utilities, including telecommunications public utilities.[3] The underpinnings of the regulatory regime established by the North Carolina General Assembly in Chapter 62 were, of course, rate of return regulation and the monopoly provision of telecommunications services.[4] With the passage of House Bill 161 during the 1995 Legislative Session, however, the North Carolina General Assembly authorized the North Carolina Utilities Commission to open both the local exchange and exchange access telecommunications markets to competition while also permitting local exchange companies

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[2] 1996 Act § 254(b)(1).

[3] N.C.G.S. § 62-3(23)a.6.

[4] Subsequently, the North Carolina General Assembly amended Chapter 62 to authorize the Commission to permit long distance competition (N.C.G.S. § 62-110(b)), coin telephone competition (N.C.G.S. § 62-110(c)), shared tenant service (N.C.G.S. § 62-110(d)), and the resale or sharing of local exchange service by non-profit colleges and universities (N.C.G.S. § 62-110(e)).

subject to that competition to elect price regulation.[5] By House Bill 161, the North Carolina Utilities Commission was also authorized to adopt rules

> (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted.[6]

A core principle embodied in House Bill 161 was, and is, negotiation between local exchange companies and competing local providers.[7] Moreover, House Bill 161 provides for determination by the North Carolina Utilities Commission "of the appropriate rates for interconnection" in the event that the parties are unable to agree on the rates for interconnection. On February 23, 1996, pursuant to its statutory mandate, the North Carolina Utilities Commission promulgated Interim Rules setting forth the regulatory structure for competing local providers and implementing the introduction of competition into the local exchange and exchange access telecommunications markets. Then,

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[5] N.C.G.S. § 62-133.5.

[6] N.C.G.S. § 62-110 (f1).

[7] N.C.G.S. § 62-110(f1): "local exchange companies and competing providers shall negotiate the rates for local interconnection."

subsequent to the passage of the 1996 Act, the North Carolina Utilities Commission entered an order in Docket No. P-100, Sub 133, setting forth notification requirements with respect to interconnection requests and a procedure for requesting arbitration under the 1996 Act. Among other things, the North Carolina Utilities Commission required parties requesting local interconnection to provide a copy of the interconnection request to the Commission so that it might determine the date upon which the interconnection request was made. Subsequent to entry of the April 15 Order, the North Carolina Utilities Commission has received a number of requests indicating that negotiations between potential interconnectors and local exchange companies are underway.

Thus, under the North Carolina Act, the North Carolina Utilities Commission is charged with specific responsibilities for overseeing the introduction of local exchange and exchange access competition into the North Carolina telecommunications market, and, prior to the passage of the 1996 Act, the North Carolina Utilities Commission had already made significant progress toward this goal, progress that is consistent with the goals of the 1996 Act. In addition, four local exchange companies have applied for price regulation, and the North Carolina Utilities Commission has approved modified versions of the price regulation plans submitted by those local exchange companies. Those plans will be effective upon acceptance by

each of the applicant local exchange companies.

The North Carolina Public Staff has been a major participant in the passage of House Bill 161, in the development and adoption of Interim Rules governing competition, and in the approval of price regulation plans for the four major LECs of North Carolina. Accordingly, the North Carolina Public Staff will be affected by any rules adopted by this Commission in this proceeding and, thus, has standing to submit these Comments.

II. The Telecommunications Industry in North Carolina and Regulatory Policy.

In terms of population, North Carolina is the tenth largest state in the United States, with over seven million people spread over a land mass that stretches from the Appalachian Mountains to the Outer Banks, a distance of over five hundred miles. In North Carolina, 49.7 percent of the population resides in rural areas, against a percentage of only 24.8 percent for the United States as a whole. North Carolina median household income is $30,114.00, against a United States median income of $32,264.00. In this regard, North Carolina ranks 34th in the United States. North Carolina's economy, nevertheless, is the 11th largest in the United States.

North Carolina's diverse population is served by over twenty-five telephone companies, ranging from BellSouth, with over two million access lines and serving the more densely-populated areas of the state, to a variety of small,

private companies and telephone membership corporations, five of which have fewer than two thousand access lines and generally serve North Carolinians residing in less-populated, more-rural areas.

These demographic and economic factors have, over the years, presented a number of different policy challenges to the North Carolina Utilities Commission and the North Carolina Public Staff. Faced with these challenges, the North Carolina Public Staff has been guided by the principle that the different conditions that obtain throughout the State oftentimes require different solutions. Thus, while attempting to achieve uniform policies throughout the State, the North Carolina Public Staff has always believed that the best results come from a pragmatic reconciliation of policy goals with specific factual circumstances. We submit that the success of this approach is evinced by a number of factors.

First, the telephone companies of North Carolina have produced a highly advanced telecommunications infrastructure that is competitive with that of any state in the United States. For example, by November of this year, the entire state of North Carolina will be served by digital central offices. Second, North Carolina's subscribership penetration rate is 92.6 percent, which, while below the national average, has increased by five percentage points in the last decade. During that time period, the nation as a whole has increased its subscribership penetration rate by

only about half as much. It is manifestly clear to us that the progress in our telephone penetration rate is a direct result of reasonable rates for local exchange service. For example, the three largest LECs in North Carolina -- BellSouth, Carolina Telephone Company, and General Telephone -- have all seen their rates for residence service decline significantly in real terms over the last decade, and BellSouth's rates have declined in nominal terms as well.

Third, telephone markets in North Carolina are growing at healthy rates. The percentage growth in access lines is well above the national average. In fact, between 1989 and 1994, access lines grew in BellSouth's North Carolina operations by 20.09%, a rate higher than any other regional Bell company and significantly higher than the national average of 14.55%.

These salutary developments have not just happened. While undoubtedly there are a number of important factors that have made these developments possible, the North Carolina Public Staff submits that important decisions made by the North Carolina Utilities Commission with respect to fundamental policy matters over the years have nurtured and, indeed, produced these beneficial results for the people of North Carolina.

III. Telecommunications Competition in North Carolina.

As set forth above,[8] the General Assembly has gradually authorized the introduction of competition into the various segments of the telecommunications market, culminating with the empowerment of the North Carolina Utilities Commission to permit local exchange and exchange access service competition this year. Historically, this state has enjoyed vigorous competition in the markets into which the North Carolina Utilities Commission has been authorized to introduce that competition. Thus, for example, there are now roughly 116 certificated interexchange carriers, and in the coin telephone market, there are roughly 430 certificated coin telephone competitors.

The North Carolina Utilities Commission has traditionally approached competition from a philosophical position that calls for the Commission to oversee the introduction of competition into a particular marketplace. But when that competition takes hold, the Commission believes its role is to remove itself from the active regulation of competition in that market and instead to act as a "traffic cop," regulating not competition but only the ground rules for that competition. This traditional approach is, we submit, consistent with both House Bill 161 and the 1996 Act.

North Carolina is, accordingly, one of the nineteen

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[8] Footnote 4, p. 4.

states described by the FCC in its NPRM[9] as having promulgated rules to open local exchange markets to competition.

IV. Comments With Respect to the NPRM.

Clearly, the purpose of both the North Carolina legislation and the federal legislation was the introduction of competition into the local exchange and exchange access telecommunications markets. Both enactments establish negotiation between the interconnecting parties as the fundamental basis for interconnection.[10] Both enactments then establish a role for the state commission in the event that those negotiations are unsuccessful, and finally, under the 1996 Act, if those negotiations are successful, or if an agreement is produced through arbitration, the state commission must approve the final agreement.[11]

Negotiations between the interconnecting parties are, as we have stated, already under way in North Carolina. With those negotiations already under way, the FCC has released an NPRM raising some four-hundred issues, the resolution of which will occur at a time when many of those same issues will have been resolved by negotiation in accordance with both the federal and the North Carolina

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[9] Footnote 10, NPRM, at p. 4.

[10] § 252, 1996 Act; N.C.G.S. § 62-110(f)(1).

[11] § 252(e)(1), 1996 Act.

acts. If the FCC, in the resolution of the issues set forth and described in its NPRM, promulgates detailed rules with respect to interconnection, the FCC will, we submit, eviscerate those negotiations of any importance, and will also eviscerate the North Carolina Act as well as the regulations that the North Carolina Utilities Commission has already promulgated thereunder.

North Carolina is unique in its demographic characteristics, in its regulatory history, indeed, in the configuration of its entire telecommunications industry. All states are unique in these regards. The Congress recognized the unique and individual characteristics of our different states when it specifically set forth in the 1996 Act a role for the states in implementing the 1996 Act. If the Congress had wanted to preempt these roles for the state commissions, the Congress certainly knew how to do so.[12] The Congress did not do so, because it did not intend to do so. Accordingly, the FCC should not, we submit, attempt to do so by regulatory fiat through the adoption of detailed rules and regulations that stifle the initiatives now under way in the various states, including North Carolina. We are concerned that explicit national rules will unduly constrain North Carolina's ability to address unique policy considerations in a way that best serves the interests of

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[12] Taylor v. General Motors, 875 F.2d 816, 824 (11th Cir. 1989). The inclusion of § 601 -- entitled "No Implied Effect" -- specifically precluded a court or agency from finding an implied preemption under the 1996 Act.

our citizens.

Clearly, the development of detailed national rules would prevent the states from using their knowledge of state-specific technological, geographic, and demographic conditions -- all as set forth in the NPRM[13] -- to develop rules to implement the 1996 Act -- rules that reflect local conditions and that are consistent with the 1996 Act. State commissions are, we submit, in a better position than the FCC to determine what might, for example, constitute technical feasibility in rural North Carolina as opposed to what might constitute technical feasibility in New York City. The body of experience with local competition is limited at this time, and the states should be permitted to implement different pro-competitive regimes in order to achieve the most effective public policies for their particular needs and circumstances.

Further, the establishment of national rules would not appear to allow for the consideration of rate structures and costing methodologies that vary significantly from state to state, and even from telecommunications carrier to telecommunications carrier within a state. Ignoring these differences could engender, we submit, changes to a myriad of state-established local exchange rates and could thereby significantly affect established social pricing policies. Moreover, specific detailed rules could result in agreements

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[13] See, e.g., p. 33.

that are less competitive or less optimal than those agreements would have been if left to a flexible negotiation process. Detailed rules will also vitiate state authority and responsibility for arbitration, reducing that role to little more than enforcement of FCC rules. For these reasons, the FCC should not, we submit, attempt to adopt detailed rules with respect to interconnection, negotiation, and arbitration but should, rather, adopt the specific language that the Congress has set forth in the 1996 Act and should allow the states -- and the interconnecting parties -- to establish the actual terms and conditions of interconnection, terms, and conditions that will reflect varying local conditions.

V. Conclusion.

We stand at a watershed. With the 1996 Act, as with North Carolina's House Bill 161, the Congress has opened telecommunications markets to competition. Clearly, the thrust of that legislation is the introduction of competition into the telecommunications marketplace, competition that will itself regulate those marketplaces. The cornerstone of the competitive process envisioned by the Congress in the 1996 Act is negotiation between the parties, followed by mediation, arbitration, and approval of negotiated and arbitrated agreements by state commissions. If the FCC adopts detailed rules with respect to the myriad issues set forth in its NPRM, it will fundamentally alter,

and perhaps destroy, the process established by the Congress in the 1996 Act. We urge the FCC instead to adopt broad, general guidelines that carry out the intent of the Congress as manifested in the 1996 Act and that will also permit the state commissions a major role in the development of policies to carry out the congressional intent.

Respectfully submitted,

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